



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

201021043

Uniform Issue List: 408.03-00

MAR 04 2010

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Legend:

Taxpayer A	=	XXXXXXXXXXXXXX
Financial Advisor B	=	XXXXXXXXXXXXXX
Financial Institution C	=	XXXXXXXXXXXXXX
Financial Institution D	=	XXXXXXXXXXXXXX
Company W	=	XXXXXXXXXXXXXX
IRA X	=	XXXXXXXXXXXXXX
		XXXXXXXXXXXXXX
		XXXXXXXXXXXXXX
Amount 1	=	XXXXXXXXXXXXXX
Date 1	=	XXXXXXXXXXXXXX
Date 2	=	XXXXXXXXXXXXXX

Dear XXXXXXXXXX:

This is in response to your ruling request dated July 29, 2009, submitted on your behalf by your authorized representative, as supplemented by correspondence dated September 30, 2009, and January 14, 2010, in which you request a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (the "Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

Taxpayer A represents that on Date 1, he received a distribution of Amount 1 from IRA X. Taxpayer A asserts that his failure to accomplish a rollover within the 60-day period prescribed by section 408(d) of the Code was due to incorrect advice provided by Financial Advisor B that he had 90 days instead of 60 days in which to deposit Amount 1 into a new IRA account.

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Taxpayer A represents that [redacted] was the owner of IRA X, an individual retirement arrangement ("IRA") established and maintained at Financial Institution C under the rules of section 408 of the Code. Taxpayer A represents that on Date 1, [redacted] received a distribution of Amount 1 from IRA X. Taxpayer A asserts that prior to the distribution, he talked to Financial Advisor B and was advised that [redacted] had 90 days to rollover the distribution without any tax consequences. [redacted] deposited Amount 1 into a non-IRA account at Financial Institution D, with the intention of rolling it over into an IRA. However, Taxpayer A did not complete the rollover until Date 2, which was 83 days from the date of the distribution. At the time of the distribution, [redacted] was on disability leave from Company W and was concerned about being able to return to work at Company W because of his disability. [redacted] is currently on his second disability leave from Company W and has only been able to work six months in the last two and a half years.

Taxpayer A has provided documentation supporting his contention that [redacted] was provided with erroneous advice by Financial Advisor B.

Based on the above facts and representations, you request a ruling that the Internal Revenue Service ("Service") waive the 60-day rollover requirement contained in section 408(d)(3) of the Code with respect to the distribution of Amount 1.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines, and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if:

(i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the payment or distribution; or

(ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

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Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359 (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error, (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and documentation submitted by Taxpayer A is consistent with his assertion that his failure to accomplish a timely rollover within the 60-day period was due to the incorrect advice provided by Financial Advisor B that he had 90 days in which to rollover Amount 1 into another IRA. Taxpayer A, in fact, redeposited Amount 1 83 days after the distribution.

Under the circumstances presented in this case, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount 1 from IRA X. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount 1 to a Rollover IRA. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, Amount 1 will be considered a valid rollover contribution within the meaning of section 408(d)(3) of the Code.

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No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file with this office, a copy of this letter ruling is being sent to your authorized representative.

If you wish to inquire about this ruling, please contact XXXXXXXXXX (Government Identification Number XX-XXXXXX) by phone at XXX-XXXXXXX. Please address all correspondence to SE:T:EP:RA:T2.

Sincerely,



Donzell Littlejohn, Manager
Employee Plans Technical Group 2

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose